

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Comply with the
Mandates of Senate Bill 1563 Regarding
Deployment of Advanced Telecommunications
Technologies.

Rulemaking 03-04-003
(Filed April 3, 2003)

**SCOPING MEMO AND RULING
RESPONDING TO MOTION OF LATINO ISSUES FORUM AND THE
CALIFORNIA COMMUNITY TECHNOLOGY POLICY GROUP**

This ruling and scoping memo follows a prehearing conference (PHC) held on September 15, 2003, addressing the scope of issues and outstanding procedural matters. This ruling also responds to the motion of the Latino Issues Forum and the California Community Technology Policy Group (together, LIF/CCTPG).

Proceeding Issues

The Commission opened this rulemaking on April 3, 2003 in response to the legislature's passage of Senate Bill (SB) 1563 (Ch.674, Stats. 2002), which amended Pub. Util. Code § 709 and additionally § 709.3. SB 1563 requires the Commission to develop a plan for encouraging the widespread availability and use of advanced communications infrastructure and to submit a report of its findings and recommendations to the Legislature by December 31, 2004. Rulemaking (R.) 03-04-003, which initiated this rulemaking, sets forth the scope of this proceeding in some detail.

At the PHC, MCI proposed to include within the scope of this proceeding the issue of whether SBC California (SBC) should be required to unbundle fiber-fed digital loop carrier network. MCI explained that this technology would promote deployment of broadband technology. Covad Communications Company (Covad) made similar comments. To the extent this issue concerns barriers to or opportunities for deploying advanced telecommunications technologies in California, the parties may raise these issues in comments and the Commission may include those concerns in its final report.

This ruling confirms the scope of issues in this proceeding as those identified in R.03-04-003.

LIF/CCTPG's Motion

LIF/CCTPG filed a motion on March 16, 2004 suggesting a variety of procedural steps in this proceeding. We herein consider them as part of this scoping memo and ruling.

In general, LIF/CCTPG's motion asks the Commission to expand its outreach efforts in this case, to convene a panel of experts on broadband technology and to schedule public hearings. LIF/CCTPG make this request with the view that these procedural steps would improve the Commission's knowledge and understanding of deployment of advanced telecommunications technology, and contribute to the Commission's report. This ruling addresses each request and the responses of SBC, Verizon California, Inc. (Verizon) and the Office of Ratepayer Advocates (ORA).

Expanded Outreach to Regional Technology Centers. LIF/CCTPG asks the Commission to expand outreach efforts on SB 1563 topics by scheduling additional meetings with regional technology centers in five different areas of the

state. LIF/CCTPG believes these groups could provide valuable insights for the report due to the Legislature.

SBC comments that the five public meetings already conducted by the Commission were well-attended and does not see adequate justification for more such meetings. ORA also questions whether additional meetings are a good idea in light of the schedule in the proceeding and given limited resources.

The Commission has conducted five public meetings at which dozens of local community representatives spoke. The information derived from those meetings will provide an essential foundation for the analysis and conclusions of the Commission's report to the Legislature required by SB 1563. We do not doubt that, given the time and resources, more meetings might provide more useful information from local communities about issues relating to deployment advanced telecommunications services. Nevertheless, we question whether such meetings would provide enough information to justify diverting scarce staff resources from other tasks required by the creation of a rigorous and useful report.

Another of LIF/CCTPG's suggestions in this regard is for the Commission to conduct a survey of users and user groups. The Commission staff has conducted a survey of local community groups and, consistent with LIF/CCTPG's suggestion, is in the process of conducting a second survey of users and user groups. The results of these surveys will provide a reasonable supplement to the outreach already undertaken by Commission staff. We also welcome any group or interest to file comments on the draft report when it is published.

Blue Ribbon Task Force. LIF/CCTPG propose the Commission convene a Blue Ribbon Task Force of telecommunications experts and community members

who provide services to underserved communities. The Task Force would advise the Commission on how to promote advance telecommunications services in underserved communities.

ORA comments that the creation of a Task Force may unnecessarily slow the progress of the proceeding and duplicate the efforts of the Commission. Verizon and SBC make similar comments.

SB 1563 charges the Commission with advising the Legislature on issues relating to the deployment of advanced telecommunications services. The Commission staff has worked hard over the past year to collect and analyze all types of data and information on these subjects. The Commission has and will continue to encourage experts in the field to provide insights as part of this effort. We encourage parties to collaborate in presenting expert opinion and analysis to the Commission and they may identify themselves as a task force or any other type organization without an act of the Commission. However, we hesitate to create an organization that might implicate state laws regarding formal procedures of governmental and quasi-governmental agencies. We are therefore not convinced that the creation of a Task Force is necessary or desirable at this time.

Hearings. LIF/CCTPG propose the Commission conduct evidentiary hearings to hear from expert witnesses. Alternatively, LIF/CCTPG propose the Commission conduct an en banc hearing at which Commissioners hear from experts and interested parties.

SBC and Verizon support an en banc hearing but do not believe evidentiary hearings or public participation hearings are necessary in this case. ORA does not object to hearings.

LIF/CCTPG do not describe the types of disputed factual issues that would be the subject of evidentiary hearings and for that reason we are not convinced at this time that evidentiary hearings would be a good use of the Commission's or the parties' resources. On the other hand, en banc legislative-style hearings before the full Commission could be very useful in the Commission's effort to get a broad overview of opportunities for and barriers to deployment of advanced telecommunications services in California, and to understand the parties' views on a draft report. We intend to schedule such a hearing after issuing a draft report for public comment.

Procedural Schedule

At this time, and consistent with the foregoing discussion, we anticipate the following schedule in this proceeding:

Issuance of proposed staff report	Early September 2004
Opening Comments filed by parties	Late September 2004
Commission En Banc Hearing	Early October 2004
Reply and Supplemental comments	Late October 2004
Final Commission Decision adopting report; submittal to Legislature	December 2004

The Reply and Supplemental Comments will permit parties to address issues raised at the en banc hearings and those raised in the Opening Comments. Subsequent rulings will provide more specific dates for each type of pleading and the en banc hearing.

Category of Proceeding

The Commission preliminarily determined that this is a quasi-legislative proceeding for which no hearings are likely to be required. The Commission invited objections to its initial categorization. No party has expressed any

objection. This ruling confirms that the proceeding is quasi-legislative. The Commission does not plan to conduct evidentiary hearings at this time.

Principal Hearing Officer

Administrative Law Judge (ALJ) Kim Malcolm is the principal hearing officer in this proceeding. The assigned ALJ is authorized to modify the schedule and make procedural decisions as required to assure the fair and efficient conduct of the proceeding.

Service of Documents and Service List

The service list for this proceeding is located at the Commission's Website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties must make their request by written motion to intervene, or orally on the record during the proceeding. Those not already participating, but who wish to do so as nonparties, may request that their names be added to the service list (in the "information only" or "state service" category) by sending an e-mail note to ALJ Malcolm (kim@cpuc.ca.gov).

Parties may serve formal documents on other parties electronically and need not serve paper copies except to those parties who have requested them. Parties must file formal pleadings consistent with Article 2 of the Commission's Rules of Practice and Procedure. The Commission will follow the electronic service protocols attached to this ruling.

Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3. Because this proceeding is categorized as "quasi-legislative," ex parte communications with decision-makers are not prohibited.

IT IS RULED that:

1. The scope of issues in this proceeding is set forth in Rulemaking 03-04-003.
2. The procedural schedule is set forth herein.
3. This proceeding is designated as "quasi-legislative."

4. The joint motion of Latino Issues Forum and California Community Technology Policy Group is denied except to the extent set forth herein.

Dated May 11, 2004, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

/s/ KIM MALCOLM

Kim Malcolm
Administrative Law Judge

ATTACHMENT

SERVICE LIST AND ELECTRONIC SERVICE PROTOCOLS

The service list for this proceeding is located at the Commission's website (www.cpuc.ca.gov). Those who are not already parties, but who wish to participate in this proceeding as full parties may make a written motion to intervene or submit an appearance form at a hearing. Those who wish to be included as parties on the service list may alternatively send their requests in an e-mail note to ALJ Malcolm (kim@cpuc.ca.gov).

To reduce the burden of service in this proceeding, the Commission will use electronic service, to the extent possible using the electronic service protocols provided in this ruling.

All individuals on the service list should provide electronic mail addresses. The Commission and other parties will assume a party consents to electronic service unless the party indicates otherwise.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, et seq., of the Commission's Rules of Practice and Procedure.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

1. Merge into a single electronic file the entire document to be served (e.g., title page, table of contents, text, attachments, service list).
2. Attach the document file to an electronic note.
3. In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
4. Within the body of the note, identify the word processing program used to create the document if anything other than Microsoft Word. (Commission experience is that most recipients can readily open documents sent in Microsoft Word 6.0/95.)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (regular U.S. mail shall be the default, unless another means—such as overnight delivery—is mutually agreed upon).

Parties should exercise good judgment regarding electronic mail service, and moderate the burden of paper management for recipients. For example, if a particularly complex matrix or cost-effectiveness study with complex tables is an attachment within a document mailed electronically, and it can be reasonably foreseen that most parties will have difficulty printing the matrix or tables, the sender should also serve paper copies by U.S. mail, and indicate that in the electronic note.

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of electronic mail addresses:

- On the "Legal Documents" bar choose "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding (or click "edit," "find," type in R0010002, and click "find next").
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Parties should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur, although PDF files can be especially difficult to print out.) For the purposes of reference and/or citation (e.g., at the Final Oral Argument, if held), parties should use the pagination found in the original document.

(END OF ATTACHMENT)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, served a true copy of the original attached Scoping Memo and Ruling Responding to Motion of Latino Issues Forum and the California Community Technology Policy Group on all parties of record in this proceeding or their attorneys of record.

Dated May 11, 2004, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

R.03-04-003 SK1/KLM/jva

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.